

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

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U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE,
SUCCESSOR IN INTEREST TO BANK OF AMERICA,
NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR
BY MERGER TO LASALLE BANK NATIONAL
ASSOCIATION, AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST, MORTGAGE LOAN
ASSET-BACKED CERTIFICATES, SERIES 2006-FF1,

Plaintiff,

-against-

Docket # 1:21-cv-01372-GTS-DJS
**AMENDED
JUDGMENT OF
FORECLOSURE AND SALE
AND AMENDMENT OF
CAPTION**

FRANK CASIMO,

“JOHN DOE #1” through “JOHN DOE #12,” the last
twelve names being fictitious and unknown to plaintiff,
the persons or parties intended being the tenants,
occupants, persons or corporations, if any, having or
claiming an interest in or lien upon the premises
described in the Complaint,

Defendants(s).

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On the Summons in a Civil Action (the “Summons”) and Complaint (the “Complaint”) filed herein on December 31, 2021; on the Notice of Pendency filed in the Albany County Clerk’s office on December 27, 2021 and upon the Plaintiff’s Motion for a Judgment of Foreclosure and Sale pursuant to Rule 55(a) of the Federal Rules of Civil Procedure;

NOW, upon the Affirmation of Joseph F. Battista, Esq., dated March 29, 2022 and the Affidavit of Amounts Due and Owing of Britney Fisher sworn to on March 22, 2022, the Court finds that;

The amount due on the Note and Mortgage is as follows: unpaid principal balance in the amount of \$106,959.10 plus accrued interest, as of February 24, 2022, in the amount of \$15,568.35,

plus insurance advances in the amount of \$503.33, property inspections in the amount of \$425.00, and property preservation in the amount of \$31,216.11 amounting to \$154,671.89.

IT IS ORDERED, ADJUDGED AND DECREED that the mortgaged premises described in the Complaint and described in Schedule "A" annexed hereto be sold pursuant to this Judgment.

Together with all right, title and interest of the owner thereof, if any, in and to the land lying in the streets and road in front of the adjoining said premises, to the center line thereof.

Together with all fixtures and articles of personal property annexed to, installed in or used in connection with the mortgaged premises as more fully set forth in the aforementioned mortgage to be sold in one parcel subject to the following, any state of facts that an accurate survey may show; easements, covenants, restrictions or reservations or records, of any; zoning restrictions and any amendments thereto according to law now in force existing violations and order of the appropriate departments of any City, Town or Village, if any; the physical condition of the premises at the time of closing; and with any apportionments or adjustments; at public auction to be held at the Albany County Courthouse, 16 Eagle Street, Albany, New York 12207, by and under the direction of Daniel W. Coffey, Esq., 17 Elk Street, Albany, NY 12207 who is hereby designated the Referee herein to sell the mortgaged premises in accordance with that purpose; that said Referee give public notice of the time and place of such sale in accordance with RPAPL 231 in Albany Times Union; and it is further

ORDERED, ADJUDGED AND DECREED that the plaintiff or any other party or parties to this action may become a purchaser at such sale, and that if plaintiff becomes such purchaser no deposit shall be required. That said Referee execute to the purchaser or purchasers on such sale a deed or deeds of the premises sold. All deed stamps, transfer taxes and recording fees, if any, shall

be paid by the purchaser. That said Referee on receiving the proceeds of the sale, shall forthwith deposit the same in the name of the Referee, as Referee, in an IOLA account with an FDIC insured bank and provide counsel for plaintiff with the name and location of said bank, and the Referee shall thereafter make the following payments therefrom and the Referee's checks drawn for such purpose shall be paid by such depository, to wit:

- FIRST: The Referee shall pay a sum not to exceed \$750.00, the amount allowed by Section 8003 of the CPLR to the Referee as the Referee's fee herein.
- SECOND: The Referee shall pay advertising expenses and the expenses of said sale as shown on the bills presented and certified by the said Referee to be correct.
- THIRD: The Referee shall pay the amount of any lien or liens upon the premises to be sold at the time of such sale for taxes, assessments, water rates and sewer rents, together with such interest up to the date of payment, together with any and all sums which may be necessary to redeem the property so sold from any and all sales, unpaid taxes, assessments, water rates, and any sums expended for the protection, preservation, security or maintenance of the property, including, but not limited to, fire insurance and property inspections. The Referee shall pay or refund to the plaintiff, if paid by it, any of the aforementioned sums. The Referee shall pay to the plaintiff's attorney the sum of \$5,225.00 for reasonable attorneys' fees incurred by plaintiff to protect or enforce plaintiff's security interest in the premises.
- FOURTH: The Referee shall pay to the plaintiff or his attorney the sum of \$1,022.00 which is hereby awarded to it for costs and disbursements to be taxed by the Clerk of this Court and inserted herein, with interest thereon

from the date hereof, together with an extra allowance of \$300.00 hereby awarded to the plaintiff in addition to costs and disbursements, with interest thereon from the date hereof, and also the sum of \$154,671.89 being the amount found due as aforesaid, together with interest at the contract rate thereon from February 25, 2022 to the date of entry of judgment and thereafter interest at the statutory rate thereon, to the date of the sale directed herein or to the date of the delivery of the Referee's Deed, whichever is later or so much thereof as the purchase money will pay of the same.

FIFTH: That, if the Referee intends to apply for a further allowance for the Referee's fee, the Referee may leave on deposit such amount as will cover further order of the Court thereon after application duly made.

SIXTH: The Referee shall pay to the Plaintiff its assigns, the sum due under its mortgage plus interest at the contract rate, or so much thereof, as the purchase money will pay of the same, plus escrow advances, legal fees and disbursements thereon and that the Referee shall take an affidavit from Plaintiff or its representative setting forth the amount due thereunder and a receipt therefore and file it with the Referee's Report of Sale.

SEVENTH: That the said Referee take receipts for the money so paid out by the Referee and file the same with the Referee's Report of Sale and that the Referee deposit the surplus money, if any, with the Treasurer of Albany County within five days after the same shall be received and ascertainable, to the credit of this action, to be drawn only on order of this Court, signed by a Justice thereof; and it is further

ORDERED, ADJUDGED AND DECREED that the said Referee make a Report of such sale and file it with the Clerk of the Court within 30 days of completing the sale and executing the proper conveyance to the purchaser, and that the purchaser or purchasers at such sale be let into possession upon production of the Referee's deed or deeds; that, if the proceeds of such sale be insufficient to pay the amount so Reported due to the plaintiff and interest, costs and allowances as aforesaid, said Referee specify the amount of such deficiency in the Referee's Report of Sale; and it is further

ORDERED, ADJUDGED AND DECREED that, in case the plaintiff shall become the purchaser of the premises directed to be sold, as aforesaid, or in the event that the rights of the purchaser at said sale, and the terms of sale under this judgment shall be assigned to or acquired by the plaintiff, and a duly executed assignment thereof in writing be filed with the Referee, said Referee shall not require the plaintiff to pay in cash the entire amount bid at said sale, but shall execute and deliver to the plaintiff a deed or deeds of the premises sold, upon payment to the Referee of the amounts specified above in the paragraphs marked "FIRST", "SECOND" and "THIRD", or in lieu of the payment of the said last mentioned amounts, upon filing with said Referee receipts of the proper municipal authorities showing the payment thereof. That the balance of the amount bid, if any, shall be allowed to the plaintiff, and applied by the paragraph marked "FOURTH" above. That if, after so applying the balance of the amount paid, there shall be a surplus over and above the amounts due to the plaintiff, the plaintiff shall pay to the said Referee, upon delivery to it of the Referee's deed, the amount of such surplus, and the Referee shall then deposit the balance with such depository as herein directed; and it is further

ORDERED, ADJUDGED AND DECREED that the defendants in this action, and all persons claiming under them subsequent to the filing of the notice of the pendency of this action

be, and they are forever barred and foreclosed of all right, title, claim, lien and equity of redemption in the said mortgaged premises and in each and every part and parcel thereof.

The following is a description of the premises heretofore mentioned:

(See Schedule "A" annexed hereto)

SAID premises being known as and by the street number 902 Park Avenue, Albany, New York 12208, and it is further

ORDERED, ADJUDGED AND DECREED that the premises be sold subject to:

- (a) The state of facts an accurate survey will show;
- (b) All covenants, restrictions, easements, agreements and reservations, if any, of record and to any and all violations thereof;
- (c) Any and all building and zoning regulations, restrictions and ordinances of the municipality in which said premises are situated, and to any violations of the same, including, but not limited to, reapportionment of lot lines, and vault charges, if any;
- (d) Any and all orders or requirements issued by any governmental body having jurisdiction against or affecting said premises and violations of the same;
- (e) The physical condition of any buildings or structure on the premises as of the date of the later to occur of the closing date or the of the closing date hereunder;
- (f) Rights of tenants in possession, if any.
- (g) Prior mortgages and judgments, if any, now liens of record
- (h) Right of Redemption of the United States of America, if any;
- (i) Rights of any defendants pursuant to CPLR Section 317, CPLR Section 2003, RPAPL Section 1302-a, RPAPL Section 1304 and CPLR Section 5015, if any;
- (j) Any and all Hazardous Materials in the Premises including, but not limited to, flammable explosives, radioactive materials, hazardous wastes, asbestos or any material containing asbestos, and toxic substances; and,
- (k) Other conditions as set forth in the terms of sale more particularly to be announced at the sale; and it is further

ORDERED, ADJUDGED AND DECREED that each and all of the Defendants in this action, and all the persons claiming under them or any of either of them, after filing of the notice of pendency of this action, be and hereby be forever barred and foreclosed of all right, title,

claim, interest, lien and equity of redemption in said mortgaged premises and each and every party thereof; and it is further

ORDERED, ADJUDGED AND DECREED that the caption is hereby amended to read as follows:

-----X
U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE,
SUCCESSOR IN INTEREST TO BANK OF AMERICA,
NATIONAL ASSOCIATION, AS TRUSTEE, SUCCESSOR
BY MERGER TO LASALLE BANK NATIONAL
ASSOCIATION, AS TRUSTEE FOR MERRILL LYNCH
MORTGAGE INVESTORS TRUST, MORTGAGE LOAN
ASSET-BACKED CERTIFICATES, SERIES 2006-FF1,

Plaintiff,

Docket # 1:21-cv-01372-GTS-DJS

-against-

FRANK CASIMO,

Defendants.

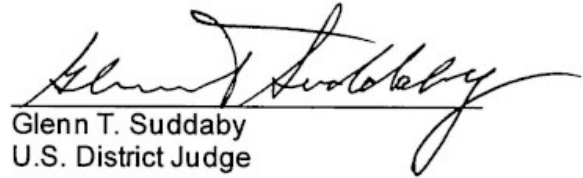
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and it is further

ORDERED, ADJUDGED AND DECREED that said premises is to be sold in one parcel in "as is" physical order and condition, subject to any state of facts that an inspection of the premises would disclose, any state of facts that an accurate survey of the premises would show; any covenants, restrictions, declarations, reservations, easements, rights of way and public utility agreements of record, if any; any building and zoning ordinances of the municipality in which the mortgaged premises is located and possible violations of same; any rights of tenants or person in possession of the subject premises; prior lien(s) of record, if any, except those liens addressed in section 1354 of the Real Property Actions and Proceedings Law, any equity of

redemption of the UNITED STATES OF AMERICA to redeem the premises with 120 days from the date of sale.

Dated: March 1 , 2024


Glenn T. Suddaby
U.S. District Judge

SCHEDULE A
DESCRIPTION OF MORTGAGED PREMISES

ALL THAT CERTAIN PLOT, PIECE OR PARCEL OF LAND with the buildings thereon erected, situate, lying and being in the City and County of Albany, State of New York being more particularly bounded and described as follows:

BEGINNING at a point in the southerly line of Park Avenue, four hundred thirty-two and fiftythree hundredths (432.53) feet easterly from the intersection of the easterly line of South Allen Street with the southerly line of Park Avenue and running thence southerly and parallel with the easterly line of Allen Street and to and through the center of a party wall of a garage on the rear of the above described premises and a garage on the premises adjoining on the west for a distance of one hundred fifteen and five tenths (115.5) feet to a point;

Thence running easterly and parallel with the southerly line of Park Avenue a distance of twenty-one (21) feet;

Thence running northeasterly with an interior angle of one hundred seven (107) degrees two (2) minutes for a distance of forty four and seventeen hundredths (44.17) feet to a point;

Thence running northeasterly with an interior angle of one hundred sixty-nine (169) degrees fifty-five (55) minutes for a distance of sixty-six and two tenths (66.2) feet to a point in the southerly line of Park Avenue;

Thence running northwesterly along the line of Park Avenue and westerly along the southerly line of Park Avenue forty-two and fifty-two hundredths (42.52) feet to the point or place of beginning.

TOGETHER with the perpetual right an easement to the parties of the second part, their heirs and assigns to use the easterly six feet of the premises adjoining the above described premises on the west extending from the front to the rear of said lot as and for common driveway from Park Avenue to the garage built or to be built on the rear of the above described premises and on the rear of the premises adjoining the same on the west; and

SUBJECT TO the perpetual rights and easements of the owner or owners of the premises adjoining on the west their heirs and assigns to use the westerly six feet of the above described premises as and for similar driveway purposes.

Federal Rules of Appellate Procedure

Rule 4. Appeal as of Right

(a) Appeal in a Civil Case.

1. (1) *Time for Filing a Notice of Appeal.*

(A) In a civil case, except as provided in Rules 4(a)(1)(B), 4(a)(4), and 4(c), the notice of appeal required by Rule 3 must be filed with the district clerk within 30 days after entry of the judgment or order appealed from.

(B) The notice of appeal may be filed by any party within 60 days after entry of the judgment or order appealed from if one of the parties is:

- (i) the United States;
- (ii) a United States agency;
- (iii) a United States officer or employee sued in an official capacity; or
- (iv) a current or former United States officer or employee sued in an individual capacity for an act or omission occurring in connection with duties performed on the United States' behalf—including all instances in which the United States represents that person when the judgment or order is entered or files the appeal for that person.

(C) An appeal from an order granting or denying an application for a writ of error *coram nobis* is an appeal in a civil case for purposes of Rule 4(a).

(2) *Filing Before Entry of Judgment.* A notice of appeal filed after the court announces a decision or order—but before the entry of the judgment or order—is treated as filed on the date of and after the entry.

(3) *Multiple Appeals.* If one party timely files a notice of appeal, any other party may file a notice of appeal within 14 days after the date when the first notice was filed, or within the time otherwise prescribed by this Rule 4(a), whichever period ends later.

(4) *Effect of a Motion on a Notice of Appeal.*

(A) If a party timely files in the district court any of the following motions under the Federal Rules of Civil Procedure, the time to file an appeal runs for all parties from the entry of the order disposing of the last such remaining motion:

- (i) for judgment under Rule 50(b);
- (ii) to amend or make additional factual findings under Rule 52(b), whether or not granting the motion would alter the judgment;
- (iii) for attorney's fees under Rule 54 if the district court extends the time to appeal under Rule 58;
- (iv) to alter or amend the judgment under Rule 59;
- (v) for a new trial under Rule 59; or
- (vi) for relief under Rule 60 if the motion is filed no later than 28 days after the judgment is entered.

(B)(i) If a party files a notice of appeal after the court announces or enters a judgment—but before it disposes of any motion listed in Rule 4(a)(4)(A)—the notice becomes effective to appeal a judgment or order, in whole or in part, when the order disposing of the last such remaining motion is entered.

(ii) A party intending to challenge an order disposing of any motion listed in Rule 4(a)(4)(A), or a judgment's alteration or amendment upon such a motion, must file a notice of appeal, or an amended notice

of appeal—in compliance with Rule 3(c)—within the time prescribed by this Rule measured from the entry of the order disposing of the last such remaining motion.

(5) *Motion for Extension of Time.*

(A) The district court may extend the time to file a notice of appeal if:

- (i) a party so moves no later than 30 days after the time prescribed by this Rule 4(a) expires; and
- (ii) regardless of whether its motion is filed before or during the 30 days after the time prescribed by this Rule 4(a) expires, that party shows excusable neglect or good cause.

(B) A motion filed before the expiration of the time prescribed in Rule 4(a)(1) or (3) may be ex parte unless the court requires otherwise. If the motion is filed after the expiration of the prescribed time, notice must be given to the other parties in accordance with local rules.

(C) No extension under this Rule 4(a)(5) may exceed 30 days after the prescribed time or 14 days after the date when the order granting the motion is entered, whichever is later.

(6) *Reopening the Time to File an Appeal.* The district court may reopen the time to file an appeal for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

- (A) the court finds that the moving party did not receive notice under Federal Rule of Civil Procedure 77 (d) of the entry of the judgment or order sought to be appealed within 21 days after entry;
- (B) the motion is filed within 180 days after the judgment or order is entered or within 14 days after the moving party receives notice under Federal Rule of Civil Procedure 77 (d) of the entry, whichever is earlier; and
- (C) the court finds that no party would be prejudiced.

(7) *Entry Defined.*

- (A) A judgment or order is entered for purposes of this Rule 4(a):
 - (i) if Federal Rule of Civil Procedure 58 (a) does not require a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79 (a); or
 - (ii) if Federal Rule of Civil Procedure 58 (a) requires a separate document, when the judgment or order is entered in the civil docket under Federal Rule of Civil Procedure 79(a) and when the earlier of these events occurs:

- the judgment or order is set forth on a separate document, or
- 150 days have run from entry of the judgment or order in the civil docket under Federal Rule of Civil Procedure 79 (a).

(B) A failure to set forth a judgment or order on a separate document when required by Federal Rule of Civil Procedure 58 (a) does not affect the validity of an appeal from that judgment or order.